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Docket No.: 1046.1242

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Mamiko KURAMOCHI

Serial No. 09/785,230

Group Art Unit: 2164

Confirmation No. 4371

Filed: February 20, 2001

Examiner: Leslie WONG

For: DATA PROCESSING SYSTEM AND DATA PROCESSING METHOD

LETTER TRANSMITTING AMENDED APPEAL BRIEF

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:


In response to the Notice of Non-Compliant Appeal Brief mailed December 20, 2006, Appellant hereby submits an Amended Appeal Brief including Evidence and Related proceedings Appendices.

If there are any additional fees associated with filing of this Letter, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 1-9-07

By: 
Michael E. Kondoudis
Registration No. 42,758

1201 New York Avenue, NW, Suite 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501



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For: DATA PROCESSING SYSTEM AND DATA PROCESSING METHOD

AMENDED BRIEF IN SUPPORT OF APPEAL UNDER 37 CFR § 41.37

Commissioner for Patents
Board of Patent Appeals and Interferences
United States Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to a Notice of Appeal filed September 11, 2006, Applicant appealed a final rejection of claims 1-38 in an Office Action mailed April 11, 2006. Appellant's Brief In Support of Appeal, together with the requisite fees set forth in 37 CFR § 1.17, are submitted herewith.

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I. Real Party in Interest (37 CFR §41.37(c)(1)(i))

The real party in interest is FUJITISU LIMITED, the Assignee of the subject application.

II. Related Appeals and Interferences (37 CFR §41.37(c)(1)(ii))

Appellant, Appellant's undersigned representative, and the Assignee of the subject application are not aware of any other appeals or interferences that will directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

III. Status of Claims (37 CFR §41.37(c)(1)(iii))

Claims 1-22 were originally filed in the application. Claims 23-38 were added by an Amendment filed July 28, 2003. Claims 1-38 are presently pending.

Claims 1, 9, and 16 are the independent claims. Claims 2-8, 10-15, and 17-38 are dependent claims.

Claims 1-38 stand finally rejected by the final Office Action mailed April 11, 2006. The rejection of claims 1-38 are the subject of this appeal.

IV. Status of Amendments (37 CFR §41.37(c)(1)(iv))

All amendments filed have been entered, and no amendments have been filed since the final Office Action mailed April 11, 2006.

In an Advisory Action mailed August 28, 2006, the Examiner indicated that the rejection of the claims would remain as stated in the final Office action mailed April 11, 2006.

V. Summary of Claimed Subject Matter (37 CFR §41.37(c)(1)(v))

Pursuant to 37 C.F.R. §1.192(c)(5), the presently claimed invention is directed to

Independent claim 1 recites: “1. A data processing system (e.g., FIG. 1) comprising: a display control unit implementing a display module displaying at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format (e.g., page 12, lines 2-23); a specifying control unit implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file (e.g., page 13, line 24 – page 14, line 20); and a setting unit setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation (e.g., page 14, line 21 – page 15, line 15).”

Independent claim 9 recites: “9. A data processing method (e.g., FIG. 9) comprising: implementing a display module to display at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format (e.g., page 12, lines 2-23); implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file (e.g., page 13, line 24 – page 14, line 20); and setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation (e.g., page 14, line 21 – page 15, line 15).”

Independent claim 16 recites: “16. A readable-by-computer medium recorded with a program (e.g., page 16, lines 4-8) comprising: implementing a display module for displaying at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format (e.g., page 12, lines 2-23); implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file (e.g., page 13, line 24 – page 14, line 20); and setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation (e.g., page 14, line 21 – page 15, line 15).”

VI. Grounds Of Rejection To Be Reviewed On Appeal (37 CFR §41.37(c)(1)(vi))

The ground of rejection for review is whether claims 1-22 and 24-38 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,484,178 to Bence, Jr. et al. in view of U.S. Patent No. 6,594,664 to Estrada et al.

VII. Argument Of Each Ground Of Rejection Presented For Review (37 CFR §41.37(c)(1)(vii))

The Rejection of claims 1, 9, and 16 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,484,178 (Bence, Jr. et al.) in view of U.S. Patent No. 6,594,664 (Estrada et al.)

In the Final Office Action mailed April 11, 2006 (hereinafter "the Final Office Action"), at page 2, item 3, the Examiner rejected claims 1-22 and 24-38 under 35 U.S.C. §103(a) as being as being unpatentable over U.S. Patent No. 6,484,178 (hereinafter Bence, Jr. et al.) in view of U.S. Patent No. 6,594,664 (herein after Estrada et al.).

Appellant respectfully submits that the following arguments are substantially similar to the arguments presented in the Response filed August 11, 2006.

To establish obviousness under §103, the Examiner must consider the claimed invention "as a whole," and the prior art must teach or suggest all of the claim features. See Manual Of Patent Examining Procedure §2143.03 (8th ed. Rev. August 2006)("MPEP"); In re Royka, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974); In re Fine, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988); Ruiz v. A.B. Chance Co., 69 U.S.P.Q.2d 1686, 1690 (Fed. Cir. 2004).

The obviousness rejections of the Final Office Action are traversed for at least the following two reasons:

- 1) The Office Action has failed to make out a prima facie case of obvious by failing to consider each feature of the claims as presented by the Amendment filed December 27, 2005;
- 2) The combination of Bence, Jr. et al. and Estrada et al. does not teach or suggest all of the features of the claims.

1. The Office Action has failed to make out a prima facie case of obvious by failing to consider every feature of the claims

Independent claim 1 recites features of a data processing system. One feature of the claimed system is a specifying control unit which implements a specifying module. The specifying module performs two different operations:

- 1) a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file; and

- 2) a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file.

Independent claims 9 and 16 recite similar features in method and readable-by-computer medium forms, respectively, and each recite a feature generally corresponding to the two-way specifying feature. Hereinafter, these two operations of the specifying modules are referred to as “the two-way specifying features”.

The Examiner’s rejection ignores the expressly recited second operation (i.e, a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file) of the two-way specifying module. Consequently, the Examiner failed to provide evidence that the two way specifying features of independent claims 1, 9, and 16 were unpatentable over the cited art. For this reason a prima facie case of obviousness has not been made.

Evidence of the Examiner’s ignoring the second operation of the two-way specifying features of the claims appears early in the final Office Action. For example, at page 3 thereof, in rejecting independent claim 1, the Examiner explains the need to modify Bence, Jr. et al. in view of Estrada et al., explaining that although Bence, Jr. et al. “does not explicitly teach firstly selects the data file and second drags the selected data file the or the format file”, Estrada et al. teaches this feature. (Final Office Action, page 3). And, because Estrada et al. allegedly provides this teaching, the Examiner contends that the two-way specifying feature is met. (Final Office Action, page 3).

As another example, the Examiner, in a “Response to Argument” section of the Final Office Action, provides a Wikipedia definition of “drag-and-drop.” (Final Office Action, page 8). However, Examiner’s application of this defined phrase, as manifested by the discussion in the “Response to Argument” section, further evidences a failure to consider each the second operation of the two-way specifying feature. Specifically, the Examiner states:

It is submitted that the act of “clicking” is equivalent with the claimed limitation “selecting” (i.e., first operation) and the drag-and-drop operation to move the object is the “second operation.”

(Office Action, page 8). The Examiner continues, explaining:

Therefore, Estrada’s drag and drop operation includes the selecting step with the drag-and-drop operation, that thus teaches the claimed limitations “firstly selecting the data file” and “secondly drags the selected data file ...”.

(Office Action, page 8).

However, independent claims 1, 9, and 16 do not merely recite “firstly selecting the data file’ and ‘secondly drags the selected data file...”, as the Examiner contends. Instead, independent claim 1, for example, recites a specifying module which, as explained above, performs two operations: (1) a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file; and (2) a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file. Thus, the Examiner’s express characterizations of the claims ignore the expressly recited second operation of the two-way specifying feature by ignoring the express recitation of “a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file. (Emphasis added). This conclusion is buttressed by the other statements of record by the Examiner including the following made in an Advisory Action mailed August 28, 2006:

Examiner submits that Estrada teaches Applicant’s claimed two steps operations indicated above as the drag and drop command that instruct the system to convert a data file to a fix format file/HTML file (col. 20, lines 46-47 and Fig. 16, element 244). As explained on page 8 of the Final Office Action dated April 1, 2006, the drag-and-drop operation includes Applicant’s claimed selecting the file and drag operation as defined by Wikipedia as one has to first select the file before the system would allow the file to be drag and drop to move the file to another location.

In response to the preceding arguments [that all of the claim features were not being considered], Examiner respectfully submits that Applicant’s amendment filed December 27, 2006 to add the limitation “a specifying control unit implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and second drags the selected data file to the format file, and secondly drags the selected format file to the data file” has been fully addressed by applying the reference Estrada et al. and provided the definition from Wikipedia as evidentiary document to further explain how the term of the art “drag-and-drop” reads on to the claimed limitations: “firstly select file... secondly drag file...”. As such, a prima facie cases of obviousness has been meet.

(Advisory Action mailed August 28, 2006, continuation sheet, paragraphs 3 and 5).

As the foregoing shows, the Examiner erred by failing to consider the expressly recited second operation of the two-way specifying features of independent claims 1, 9, and 16 and, consequently, failed to make out a prima facie case of obviousness against these claims.

2. The combination of Bence, Jr. et al. and Estrada et al. does not teach or suggest all of the features of the claims

Referring, for example to claim 1, the combination of Bence, Jr. et al. in view of Estrada et al. does not teach or suggest the two-way specifying features of independent claims 1, 9, and 16. Therefore, it is submitted that claims 1, 9, and 16 patentably define over the cited art.

By way of review, independent claims 1, 9, and 16 each recite a feature by which: (1) a format file can be selected and dragged to a data file; and (2) a data file can be selected and dragged to a format file. Applicants respectfully submit that such functionality is not rendered obvious by the mere definition of a “drag-and-drop” operation, even in combination with an alleged teaching of dragging a data file to a format file.

In the Final Office Action, the Examiner concedes that Bence, Jr. et al. does not teach or suggest the two-way specifying feature. Nonetheless, the Examiner contends that Estrada et al. provides a teaching of the feature. (Final Office Action, page 3).

Estrada et al. relates to a system and method for online/offline uninterrupted updating of rooms in collaborative space. Estrada et al. discusses selecting and dragging a non-HTML file to an area on a form so that the non-HTML file can be rendered in HTML format. (Estrada et al., Col. 20, line 45 - Col. 21, line 30). Estrada et al. does not teach or suggest selecting and dragging a form to a non-HTML file.

The combination of Bence Jr., et al. and Estrada et al. is deficient because Estrada et al. fails to provide even a suggestion of a module which performs the recited two different operations. Instead, Estrada et al. merely provides one way to convert data from the non-HTML file to HTML format by dragging a file to a form. Indeed, in contrast to present invention as recited in independent claims 1, 9, and 16, Estrada et al. discloses only “one-way” delivery of a selected file to a target. Stated another way, Estrada et al. teaches selecting and delivering a non-html file to a form, not vice versa. Thus, absent from Estrada et al. is any teaching or suggestion of the second operation of the two-way specifying feature (i.e, a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file). The absence of a disclosure in Estrada et al. of both operations of (1) of selecting a format file and dragging the selected format file to a data file and (2) of

selecting a data file and dragging the selected data file to a format file renders the asserted combination of Bence Jr., et al. and Estrada et al. deficient.

And, any interpretation of secondary citation to Estrada et al. as even suggesting reversing the file delivery taught therein so that a form is delivered to a non-HTML file is not reasonable in view of express teachings of that patent. Estrada et al. expressly teaches that the above-described one-way delivery of the non-HTML file to the form is significant because it permits the user to see the non-HTML file in its original format (to permit editing) while others viewing the page see the file in an HTML format. (Estrada et al., Col. 21, lines 5-11). Reversing the expressly taught functionality so that forms are delivered to a non-HTML file would render these objective unattainable because other viewers would not be able to see the contents of a non-HTML file in an HTML format while allowing a user to edit the file in a non-HTML format. Thus, if there is any suggestion in Estrada et al., it is that the expressly taught “one-way” delivery of the non-HTML file to the form should not be reversed.

In response to this argument, in an Advisory Action mailed August 28, 2006, the Examiner argued that such a suggestion to modify Estrada et al. was unnecessary. Specifically, the Examiner argued

In response to the preceding arguments, Examiner respectfully submits that in order to disqualify a reference based on a “teach away” reasoning, the reference has to explicitly suggest or disclose the so-called teach away steps – Applicants assertion can not be accepted if it is unsupported by a valid evidence. Even if Estrada is silent about a certain feature of the prior art, it does not necessarily mean that Estrada does not teach that particular feature.

(Advisory Action mailed August 28, 2006, continuation sheet, paragraph 7). This contention is contrary to well settled law, which provides that the mere fact that a prior art device may be capable of being modified is insufficient. Rather, there must be a suggestion or motivation in the reference to do so. MPEP, § 2143.01, III, citing In re Mills, 916 F.2d 680, 682, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990).

Accordingly, Appellant respectfully submits that the subject matter of independent claims 1, 9, and 16 is not rendered unpatentable by the combination of Bence, Jr. et al. and Estrada et al. Additionally, Appellant respectfully submits that the subject matter of claims 2-8, 10-15, and 17-38 are not disclosed by the combination of Bence, Jr. et al. and Estrada et al. at least due to their various dependencies from corresponding, independent claims 1, 9, and 16.

VIII. Conclusion


In view of the law and facts stated herein, the Appellant respectfully submits that the Office has not made a prima facie case of the obviousness of claims 1-38 and that the art cited by the Examiner is insufficient to maintain an obviousness rejection of the rejected claims. Thus, the rejection of claims 1-22 and 24-38 under 35 U.S.C. §103(a) is improper. Reversal of this rejection is therefore proper and respectfully requested.

The Commissioner is hereby authorized to charge any additional fees required in connection with the filing of the Appeal Brief to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: 1-9-07

By: 
Michael E. Kondoudis
Registration No. 42,758

1201 New York Avenue, NW, Suite 700
Washington, D.C. 20005
Telephone: (202) 434-1500
Facsimile: (202) 434-1501

IX. Claims Appendix (37 CFR § 41.37(c)(1)(viii))

1. (PREVIOUSLY PRESENTED) A data processing system comprising:
a display control unit implementing a display module displaying at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format;
a specifying control unit implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file; and
a setting unit setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation.
2. (ORIGINAL) A data processing system according to claim 1, wherein when there are provided a plurality of format files or data files, said setting unit sets the item data to the fixed format of the format file, and creates the plurality of files at one time.
3. (PREVIOUSLY PRESENTED) A data processing system according to claim 1, wherein said setting unit sets the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.
4. (PREVIOUSLY PRESENTED) A data processing system according to claim 1, further comprising a distinguishing unit distinguishing between file formats of the specified format file and data file.
5. (ORIGINAL) A data processing system according to claim 4, wherein said distinguishing unit distinguishes between the file formats of the format file and the data file on the basis of any one category of element among extensions, file names and a file selection order.

6. (PREVIOUSLY PRESENTED) A data processing system according to claim 1, further comprising a print control unit of implementing a print module for printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

7. (PREVIOUSLY PRESENTED) A data processing system according to claim 1, wherein said specifying control unit implements the specifying module for specifying the format file and the data file by a drag and drop function.

8. (PREVIOUSLY PRESENTED) A data processing system according to claim 1, wherein said setting unit sets the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

9. (PREVIOUSLY PRESENTED) A data processing method comprising:
implementing a display module to display at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format;
implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file; and
setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation.

10. (ORIGINAL) A data processing method according to claim 9, further comprising setting, when there are provided a plurality of format files or data files, the item data to the fixed format of the format file, and creating the plurality of files at one time.

11. (PREVIOUSLY PRESENTED) A data processing method according to claim 9, further comprising setting the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.

12. (PREVIOUSLY PRESENTED) A data processing method according to claim 9, further comprising distinguishing between file formats of the specified format file and data file.

13. (PREVIOUSLY PRESENTED) A data processing method according to claim 9, further comprising implementing a print module for printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

14. (PREVIOUSLY PRESENTED) A data processing method according to claim 9, further comprising implementing the specifying module for specifying the format file and the data file by a drag and drop function.

15. (PREVIOUSLY PRESENTED) A data processing method according to claim 9, further comprising setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

16. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program comprising:

implementing a display module for displaying at least one format file containing a fixed format, and at least one data file containing item data to be set to the fixed format;

implementing a specifying module which performs two different operations, a first operation in which the specifying module firstly selects the data file and secondly drags the selected data file to the format file, and a second operation in which the specifying module firstly selects the format file and secondly drags the selected format file to the data file; and

setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation.

17. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising setting, when there are provided a plurality of format files or data files, the item data to the fixed format of the format file, and creating the plurality of files at one time.

18. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising setting the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.

19. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising distinguishing between file formats of the specified format file and data file.

20. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising implementing a print module for printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

21. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising implementing the specifying module for specifying the format file and the data file by a drag and drop function.

22. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 16, further comprising setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

23. (PREVIOUSLY PRESENTED) The data processing system as in claim 1, wherein the format file and the data file are displayed as a list.

24. (PREVIOUSLY PRESENTED) A data processing system according to claim 2, wherein said setting unit sets the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.

25. (PREVIOUSLY PRESENTED) A data- processing system according to claim 2, further comprising a distinguishing unit distinguishing between file formats of the specified format file and data file.

26. (PREVIOUSLY PRESENTED) A data processing system according to claim 2, further comprising a print control unit implementing a print module printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

27. (PREVIOUSLY PRESENTED) A data processing system according to claim 2, wherein said specifying control unit implements the specifying module for specifying the format file and the data file by a drag and drop function.

28. (PREVIOUSLY PRESENTED) A data processing system according to claim 2, wherein said setting unit sets the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

29. (PREVIOUSLY PRESENTED) A data processing method according to claim 10, further comprising setting the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.

30. (PREVIOUSLY PRESENTED) A data processing method according to claim 10, further comprising distinguishing between file formats of the specified format file and data file.

31. (PREVIOUSLY PRESENTED) A data processing method according to claim 10, further comprising implementing a print module printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

32. (PREVIOUSLY PRESENTED) A data processing method according to claim 10, further comprising implementing the specifying module for specifying the format file and the data file by a drag and drop function.

33. (PREVIOUSLY PRESENTED) A data processing method according to claim 10, further comprising setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

34. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 17, further comprising setting the item data of the data file to the fixed format of the format file by a form overlay function in accordance with the specifying operation.

35. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 17, further comprising distinguishing between file formats of the specified format file and data file.

36. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 17, further comprising implementing a print module for printing contents of the item data of the data file which have been set to the fixed format of the format file in accordance with the specifying operation.

37. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 17, further comprising implementing the specifying module for specifying the format file and the data file by a drag and drop function.

38. (PREVIOUSLY PRESENTED) A readable-by-computer medium recorded with a program according to claim 17, further comprising setting the item data of the data file to the fixed format of the format file in accordance with the specifying operation of specifying the format file and the data file that are displayed in the form of display objects.

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X. Evidence Appendix (37 CFR § 41.37(c)(1)(ix))

None

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XI. Related Proceeding Appendix (37 CFR § 41.37(c)(1)(x))

None